IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6812 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

ANWAR ALIAS DADU SON OF NURMAHMMADBHAI VAGHER

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 6812 of 2002

MS BANNA DATTA ON BEHALF OF

MR AR SHAIKH for Petitioner No. 1

MR IM PANDYA AGP for Respondent No. 1-3

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 22/10/2002

ORAL JUDGEMENT

The present petition has been filed by the detenue who has been detained under the provisions of

Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as `the Act of 1985') by order dated 27/5/2002 passed by the Police Commissioner, Rajkot City and he has been declared as bootlegger.

2. It is now well settled that unless the activities of a person as bootlegger has disturbed the maintenance of public order, he cannot be detained under the Act. Reliance is placed on a decision in the case of Piyush Kantilal Mehta Vs. Commissioner of Police, Ahmedabad & Ors. reported in AIR 1989 SC 491.

3. I have heard learned advocate for the petitioner and also perused the material on record. The learned AGP tenders reply on behalf of respondent No.2. The same is ordered to be taken on record. According to learned advocate for the petitioner, the detaining authority has passed the detention order relying upon the nine offences registered against the detenu and relying upon statement of witnesses. The learned advocate for the detenu has mainly argued that the detenu has made a representation to the concerned authority on 10/7/2002, which has been rejected by the authority on 13/8/2002 and the detenu has been informed regarding the same and the detenu received the said communication through jail on 19/5/2002. The learned advocate for the detenu tenders the copy of the illegible order communicated to the detenu. The same is taken on record. According to the learned advocate for the detenu there is a delay in considering the representation and also there is a delay in communicating the decision of the said representation of the petitioner, which is unconstitutional. In support of the arguments, the learned advocate for the petitioner has placed reliance upon the decision of the Hon'ble Supreme Court reported in AIR 1981 SC 1126, in which the Honourable Supreme Court has held as under :-

> "We would emphasise that it is the duty of the State to proceed to determine representations of the character above mentioned with the utmost expedition, which means that the matter must be taken up for consideration as soon as such a representation is received and dealt with continuously (unless it is absolutely necessary to wait for some assistance in connection with it) until a final decision is taken and communicated to the detenu. This not having been done in the present case we have no option but to declare the detention unconstitutional. We order accordingly, allow the appeal and direct that the appellant be set at liberty forthwith."

4. Since the detaining authority has not decided the representation of the petitioner and not communicated the decision of the representation of the petitioner promptly, in view of the above judgment relied upon by the learned advocate for the petitioner, the order of detention is illegal and the same cannot be sustained. Learned advocate for the petitioner does not press any other points.

5. In view of the above, the petition is allowed. The order of detention dated 27/5/2001 passed against the detenu is hereby quashed and set aside. The detenu namely Anwar alias Dadu son Nurmahammadbhai Vagher is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute accordingly with no order as to costs. D.S. Permitted.

(R.P.DHOLAKIA,J.)

Rafik